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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,031	10/15/2003	Mark A. Clarner	05918-339001 / VGCP NO. 6	2175
26161 7590 06/12/2009 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER RODRIGUEZ, RUTH C	
			ART UNIT 3677	PAPER NUMBER
			NOTIFICATION DATE 06/12/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/688,031	Applicant(s) CLARNER, MARK A.	
	Examiner RUTH C. RODRIGUEZ	Art Unit 3677	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Victor Batson/
 Supervisory Patent Examiner, Art Unit 3677

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant filed a declaration from George Provost on May 14, 2009. The declaration states Mr. Provost, a person of ordinary skill in the art, that it will is not obvious to try the proposed modification of the hooks disclosed by Seth and presented in the last office action. Mr. Provost will not assume that an increase of effective area of the hooks of a hook component that will engage loops of a loop component will produce a stronger fastener component since increasing the size of a hook "doesn't necessarily improve the load-bearing capacity of a hook and loop fastener" and that in many conditions the increase in the size results in a decrease in performance "depending on various interactions between hook and loop characteristics". This declaration fails to persuade because Mr. Provost recites that he will not consider it obvious to try to increase the size of the overall head of the hooks to improve the performance of the hook component since "under many conditions" such an increase decreases the performance. However, the declaration of Mr. Provost does not state that increases of the height of the head of a hook always decreases the performance and therefore it could be possible in certain circumstances to obtain such a increase in performance. Therefore, a person of ordinary skill in the art will not always assume that increases in the height of the head of the hook will decrease its performance especially when Seth discloses that the hook component is subjected to heat treatment of the hook component and such a treatment could provide an increase in performance.

The Applicant argues that obvious to try is not possible when there are "numerous possible choices". The Examiner fails to be persuaded by this argument because Seth discloses that "With all these hook shapes the hook shape and dimension can be altered following formation by heat treatment of at least the hook elements." Therefore, Seth does provide motivation for making changes to the dimensions of the disclosed hooks.